



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 2, 2003

Ms. Gail Allan  
Administration and Northern Legal Services  
Texas Water Development Board  
P. O. Box 13231  
Austin, Texas 78711-3231

OR2003-3700

Dear Mr. Allan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181347.

The Texas Water Development Board (the "board") received a request for water use data for Region C water suppliers and water user groups. You claim that the requested information may be excepted from disclosure under section 552.101 of the Government Code in conjunction with Chapter 16 of the Water Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 16.012(m) of the Water Code provides in relevant part as follows:

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The executive administrator may conduct surveys of entities using groundwater and surface water at intervals determined appropriate by the executive administrator to gather data to be used for long-term water supply planning. . . . Surveys obtained by the board from nongovernmental entities are excepted from the requirements of Section 552.021, Government Code, unless otherwise directed in writing by the person completing the survey.

Water Code § 16.012(m). You state that the requestor would prefer to receive the responsive information in electronic format, if possible. The submitted information includes the actual surveys completed under chapter 16 of the Water Code. You also state that the board “maintains information taken from the returned surveys in electronic format that the requestor seeks,” and that the electronic format does not include all of the information reported on the surveys. The board explains that it would like to make the electronic data available to the requestor, a consultant hired by a political subdivision to aid in the long-term regional water planning process. After reviewing your arguments and the submitted information, we find that for nongovernmental entities who have not directed in writing that their information could be released to the general public, the board must withhold the submitted surveys completed under chapter 16 of the Water Code. Furthermore, we conclude that section 16.012(m) applies not only to surveys obtained by the board from nongovernmental entities subsequent to the effective date of section 16.012(m), but also to any surveys obtained by the board from nongovernmental entities prior to September 1, 2001. We note that the law which added subsection (m) to section 16.012 does not limit the applicability of the provision to only those surveys that were conducted after the effective date of the law. *See* Act of May 27, 2001, 77<sup>th</sup> Leg., R.S., ch. 966, § 2.15, 2001 Tex. Gen. Laws 1999 (providing that effective date of Act is September 1, 2001).

We also find that the information maintained by the board in electronic format, which includes information taken from the surveys, may not be withheld under section 552.101 of the Government Code in conjunction with section 16.012(m) of the Water Code. Section 16.012(m) specifically excepts “surveys” from the requirements of section 552.021 of the Government Code. As the information maintained by the board in electronic format is not a “survey” within the meaning of chapter 16 of the Water Code, it is not protected by section 16.012(m).

You also ask “how the Board should treat disclosure of the information relating to water supply corporations which have failed to indicate that they are governmental entities,” and whether you must withhold surveys from private entities and water supply corporations that are “not clearly governmental entities.” We are unable to discern which entities are governmental or nongovernmental entities because we lack the information for such a determination. Therefore, you must determine which entities are nongovernmental entities, and which entities are governmental entities, and withhold only those surveys submitted by nongovernmental entities. We note that section 16.002 of the Water Code provides that “[n]onprofit water supply corporations which receive any assistance under this chapter are subject to Chapter 551, Government Code, and to Chapter 552, Government Code.”

To summarize, the submitted information which the requestor seeks in electronic format may not be withheld from disclosure whether it relates to a governmental or nongovernmental entity. However, if no electronic format is available, the actual surveys completed by nongovernmental entities must be withheld under section 552.101 of the Government Code in conjunction with section 16.012(m) of the Water Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a stylized, flowing script.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 181347

Enc. Submitted documents

c: Mr. Tom Gooch, Vice President  
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(w/o enclosures)